



2004-03

The effect of acquisition reform on small business participation in the Federal marketplace

Cheifetz, Aaron A.

Monterey, California. Naval Postgraduate School

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NAVAL POSTGRADUATE SCHOOL

MONTEREY, CALIFORNIA

THESIS

**THE EFFECT OF ACQUISITION REFORM ON SMALL
BUSINESS PARTICIPATION IN THE FEDERAL
MARKETPLACE**

by

Aaron A. Cheifetz

March 2004

Principal Thesis Advisor:
Associate Thesis Advisor:

David V. Lamm
Peter T. Capozzoli

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REPORT DOCUMENTATION PAGE			<i>Form Approved OMB No. 0704-0188</i>	
Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188) Washington DC 20503.				
1. AGENCY USE ONLY (Leave blank)		2. REPORT DATE March 2004	3. REPORT TYPE AND DATES COVERED Master's Thesis	
4. TITLE AND SUBTITLE: The Effect of Acquisition Reform on Small Business Participation in the Federal Marketplace			5. FUNDING NUMBERS	
6. AUTHOR(S) Aaron A. Cheifetz				
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Naval Postgraduate School Monterey, CA 93943-5000			8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING /MONITORING AGENCY NAME(S) AND ADDRESS(ES) N/A			10. SPONSORING/MONITORING AGENCY REPORT NUMBER	
11. SUPPLEMENTARY NOTES The views expressed in this thesis are those of the author and do not reflect the official policy or position of the Department of Defense or the U.S. Government.				
12a. DISTRIBUTION / AVAILABILITY STATEMENT Approved for public release; distribution is unlimited			12b. DISTRIBUTION CODE	
13. ABSTRACT (maximum 200 words) <p>This thesis investigates the effect that acquisition reform has had on small business participation in the Federal contracting arena.</p> <p>As a result of the transformation of the Federal acquisition process through acquisition reform legislation and the reduction in the acquisition workforce, small business contractors are faced with new challenges to compete for and win Federal contracts.</p> <p>This paper concentrates on examining contract bundling, reverse auctions, electronic commerce and multiple award schedules. It concludes that contract bundling has had a negative effect on small businesses by excluding them from many competitions. It also finds that electronic commerce has had a positive effect on small businesses by giving them greater access to Federal contract opportunities and by speeding up the acquisition process. Regarding multiple award schedules, the research supports benefits for small businesses when they are given the chance to compete through multiple award schedules. It also finds negative implications for small businesses in that multiple award schedules often favor large established businesses at the expense of small businesses. The paper finds a lack of awareness on the part of small business concerning reverse auctions and finds no major impact on small businesses resulting from reverse auctions.</p>				
14. SUBJECT TERMS Contracting, Acquisition Reform, Contract Bundling, Reverse Auctions, Electronic Commerce, Multiple Award Schedules			15. NUMBER OF PAGES 67	
			16. PRICE CODE	
17. SECURITY CLASSIFICATION OF REPORT Unclassified	18. SECURITY CLASSIFICATION OF THIS PAGE Unclassified	19. SECURITY CLASSIFICATION OF ABSTRACT Unclassified	20. LIMITATION OF ABSTRACT UL	

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**THE EFFECT OF ACQUISITION REFORM ON SMALL BUSINESS
PARTICIPATION IN THE FEDERAL MARKETPLACE**

Aaron A. Cheifetz
Civilian, Department of the Army PEO-EIS
B.A., Ner Israel College, 1990
M.S., Johns Hopkins University, 1992

Submitted in partial fulfillment of the
requirements for the degree of

MASTER OF SCIENCE IN CONTRACT MANAGEMENT

from the

**NAVAL POSTGRADUATE SCHOOL
March 2004**

Author: Aaron A. Cheifetz

Approved by: David V. Lamm
Principal Thesis Advisor

Peter T. Capozzoli
Associate Thesis Advisor

Douglas A. Brook
Dean, Graduate School of Business and Public Policy

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ABSTRACT

This thesis investigates the effect that acquisition reform has had on small business participation in the Federal contracting arena.

As a result of the transformation of the Federal acquisition process through acquisition reform legislation and the reduction in the acquisition workforce, small business contractors are faced with new challenges to compete for and win Federal contracts.

This paper concentrates on examining contract bundling, reverse auctions, electronic commerce and multiple award schedules. It concludes that contract bundling has had a negative effect on small businesses by excluding them from many competitions. It also finds that electronic commerce has had a positive effect on small businesses by giving them greater access to Federal contract opportunities and by speeding up the acquisition process. Regarding multiple award schedules, the research supports benefits for small businesses when they are given the chance to compete through multiple award schedules. It also finds negative implications for small businesses in that multiple award schedules often favor large established businesses at the expense of small businesses. The paper finds a lack of awareness on the part of small business concerning reverse auctions and finds no major impact on small businesses resulting from reverse auctions.

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I. INTRODUCTION

A. PREFACE

Historically, small businesses have fueled the U.S. economy more than any other business category. Small businesses employ more than 51% of the private workforce, generate more than half of the Nation's Gross Domestic Product and are the principal source of new jobs in the U.S. [Ref. 1:p. 3].

Small businesses are generally more creative, more responsive and less bureaucratic than large businesses. Few businesses begin as large corporations; rather most start out as small businesses and gradually grow into large businesses. As they grow, they provide additional jobs and expand our industrial base. To ensure that small businesses receive a significant amount of business from the Federal Government, the SBA mandates that contracting activities award a certain percentage of new contracts to small businesses, including Small Disadvantaged Businesses (SDB), HubZone Small Businesses, Woman Owned Small Businesses (WSOB) and Small Disadvantaged Veteran Owned Small Businesses (SDVOSB).

Over the last decade, Congress has passed several bills designed to reform the acquisition process. These reforms have streamlined the procurement process and moved away from Government-unique specifications and toward the acquisition of commercial products. While these laws were aimed at simplifying the procedures and processes in Government contracting, they have resulted in new challenges to small businesses. There has also been a proliferation of new contracting vehicles aimed at easing the acquisition process. Various methods of smart business practices have been introduced to speed up the award process without compromising quality. Contractors are now confronted with an entirely different set of rules than those of just a few years ago. Existing guidance is often laborious to read and difficult to implement. This can be an almost insurmountable hurdle for many small businesses, which may not have the skill sets of their larger peers.

Congress has long recognized the importance of small business participation in Federal procurement, beginning in 1941 with the establishment of the Select Committee on Small Business. The basis of the Small Business Program is to foster competition,

which is basic to the economic well being of our nation. Contracting with these firms strengthens the U.S. economy, generates competition, lowers overall costs, fosters innovation, provides more jobs and enhances good business practices.

B. RESEARCH OBJECTIVE

This research will demonstrate how acquisition reform initiatives, primarily Contract Bundling, Electronic Commerce, Reverse Auctions and Multiple Award Schedules, have affected small businesses. In order to clarify these issues data will be gathered to address the following research questions.

C. RESEARCH QUESTIONS

1. Primary Research Question

To what extent have recent acquisition reform measures and streamlined acquisition methods affected participation of small businesses in Government contracting?

2. Subsidiary Research Questions

- What is a Small Business?
- What are the key laws and regulations that govern small business participation in Federal Government procurement?
- What are the most significant acquisition reform efforts recently implemented that might affect small businesses?
- To what extent have these reform efforts affected small business participation in Federal Government contracting?
- What action might be taken to enhance small business participation in Federal Government contracting?

D. SCOPE AND LIMITATIONS

The scope will include an assessment of existing small business legislation, an examination of the nature of small businesses in relation to Government contracting, an analysis of acquisition reform initiatives and a review of the ways in which acquisition reform has impacted small businesses.

This study will focus on the Department of Defense, primarily the US Army Communications-Electronics Command (CECOM) Acquisition Center, Fort Monmouth, New Jersey.

E. METHODOLOGY

The methodology used in this research consisted of a literature search and a written qualitative questionnaire. The literature search traced the origins of acquisition reform and how it has evolved since the 1990's. It also showed how small businesses have been affected by various legislation enacted as a result of acquisition reform.

The qualitative research was intended to enable the researcher to gain a greater understanding of how small businesses are being impacted by acquisition reform by asking small business executives for their perceptions and comments on each of the acquisition reform topics being explored.

F. ORGANIZATION OF THE STUDY

Chapter I provides an introduction of the objectives of the research, the primary and subsidiary questions, the scope, limitations of the research, the research methodology, definitions and the organization of the study.

Chapter II delineates the history of acquisition reform legislation, small business goals and the evolution of the four acquisition reform initiatives, Contract Bundling, Electronic Commerce, Reverse Auctions and Multiple Award Schedules.

Chapter III presents the results of the survey questionnaire as a means of showing how small businesses have been affected by the four acquisition reform initiatives.

Chapter IV presents the conclusions and recommendations generated by this research.

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II. STATUTORY AND REGULATORY REVIEW

A. INTRODUCTION

This chapter will define the major types of small business categories, examine legislation that has impacted small business and trace the origins of acquisition reform and how it has evolved from its inception through the present. It will also examine in depth the four areas of acquisition reform that the researcher believes have impacted small businesses the most.

B. DEFINITIONS

1. Small Business Concern

A small business concern is a firm that is independently owned and operated and not dominant in its field of operation. In addition, other criteria such as number of employees or dollar volume of business are considered.

The Small Business Administration (SBA) has established a size standard for most industries as follows:

- 500 employees for most manufacturing and mining industries
- 100 employees for all wholesale trade industries
- \$6 million for most retail and service industries
- \$28.5 million for most general & heavy construction industries
- \$12 million for all special trade contractors
- \$0.75 million for most agricultural industries

2. Small Disadvantaged Business Concern

A small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more such individuals.

3. Set-Aside for Small Business

The reserving of an acquisition exclusively for participation by small business concerns. A small business set-aside may be open to all small businesses. A small business set-aside of a single acquisition or a class of acquisitions may be total or partial. (FAR 19.501)

4. 8(a) Program

The 8(a) Business Development Program is a program created to help small disadvantaged businesses compete in the American economy and access the Federal procurement market. To qualify as an 8(a) firm, a firm must be a small business, must be unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and citizens of the United States, and must demonstrate potential for success.

5. Historically Underutilized Business Zone (HUBZone)

The HUBZone Empowerment Contracting Program stimulates economic development and creates jobs in urban and rural communities by providing Federal contracting preferences to small businesses. To qualify, a firm must be a small business by Small Business Administration standards; owned and controlled by one or more U.S. citizens, a Community Development Corporation, or Indian tribe; its principal office must be located within a HUBZone (which includes lands on Federally recognized Indian reservations); and who has at least 35% of its employees residing in a HUBZone. Certification is required from the SBA (FAR 19.13).

6. Prime Contractor

A prime contractor is an entity that enters into a prime contract with the United States Government. A *prime contract* is a contract or contractual action entered into by the United States Government for the purpose of obtaining supplies, materials, equipment, or services of any kind (FAR 3.502-1).

7. Subcontractor

Any entity, other than the prime contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a

subcontract entered into in connection with such prime contract; and includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher tier subcontractor (FAR 3.502-1).

C. LEGISLATION

The following major laws contain provisions that have affected small business contractors in regards to Federal procurement.

1. The Small Business Act of 1953

The Small Business Act of 1953 established the SBA as an independent agency within the Executive branch. This Act stipulated that SBA would ensure that small businesses receive a fair portion of Government contracts. Specifically, this Act directs the SBA as follows “the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive contracts or subcontracts for property and services for the Government to be placed with small business enterprises...” [Ref. 2]. This Act also mandated that all procurements over the small business threshold be published in the Commerce Business Daily, to inform small business of subcontracting opportunities. It also requires each agency with contracting authority to establish an Office of Small and Disadvantaged Business Utilization (SADBU).

2. Business Opportunity Development Reform Act of 1988

This Act requires the President to annually establish specific Government-wide goals for procurement contracts awarded to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. It prescribes minimum participation goals, and also requires the SBA to report annually to the President on the attainment of small business participation goals. This Act established an annual Government-wide goal of not less than 20 percent of the total value of prime contract awards, for each fiscal year, for award to small businesses [Ref. 2].

3. Federal Acquisition Streamlining Act of 1994 (FASA)

The passing of FASA allows the Contracting Officer to obtain the minimal amount of information needed to certify a price as fair and reasonable and to obtain certified cost and pricing data only when absolutely necessary. Prior to FASA, a commercial item was defined as an item recorded in a catalog, price list or schedule and

sold in substantial quantities based on the norm of that industry and that were sold in the normal course of business. Comparing catalog prices with proposed prices could only be done on items of a similar nature, so that any difference in price could be brought out without having to do a cost analysis. With the passing of FASA, the definition of a commercial item was expanded to include any item that is of a type customarily used by and offered for sale to the general public [Ref. 1:p. 9]. FASA also codified the authority of agencies to enter into multiple award task and delivery order contracts for goods and services. These contracts are designed to provide agencies with greater flexibility in buying goods or services, while minimizing the administrative burden on contracting personnel [Ref. 1:p. 9].

As a result of FASA the Small Business Act was amended to create an exclusive reservation for small businesses consisting of contracts valued between \$2,500 and \$100,000. However, Contracting Officers are not bound to this reservation if they are unable to obtain offers from two or more small businesses that are competitive with market prices, quality and delivery of the goods or services being purchased. Prior to FASA, contracts valued at \$25,000 or less were generally reserved for small businesses. FASA also took contracts of \$2,500 or less, commonly referred to as “micro purchases”, outside the range of the exclusive reservation for small businesses. Contracts at or under the micro purchase level do not require the Contracting Officer to obtain competitive proposals and are not required to be set-aside for small businesses. Nevertheless, FASA requires that these micro purchases be distributed equitably among qualified contractors [Ref. 1:p. 9].

4. Clinger-Cohen Act of 1996

The Clinger-Cohen Act contained reform provisions, particularly for purchases of information technology related items. The Act repealed the central authority of the General Services Administration (GSA) for information technology acquisitions, authorized the use of multi-agency contracts for such acquisitions, authorized the Office of Management and Budget (OMB) to designate agency executive agents for Government-wide Agency Contracts (GWAC) and authorized Federal agencies to make

their information technology contracts available for use by other agencies. The Clinger-Cohen Act also expanded on FASA by giving agencies greater flexibility in determining who may make micro purchases without obtaining competitive bids [Ref. 1:p. 9].

5. The Small Business Reauthorization Act of 1997

This Act amended the Small Business Act to provide for Federal contracting assistance to qualifying small businesses located in Historically Underutilized Business Zones (HUBZones). It directed the Administrator of the SBA to report to Congress on implementation of the HUBZone program. This Act also increased the annual Government wide goal to not less than 23 percent [Ref. 1:p. 9].

D. ACQUISITION REFORM INITIATIVES

Acquisition reform was first addressed as part of the Government-wide National Performance Review (NPR), which was introduced by former president Bill Clinton on March 3, 1993. The NPR report recommended the streamlining of the acquisition process through an increased reliance on the acquisition of commercial items and increasing the simplified acquisition threshold [Ref. 3]. This resulted in the passing of FASA with the goal of increasing the Government's access to products developed in the commercial sector, consolidating or eliminating some procurement requirements, encouraging performance-based contracting and creating a new simplified acquisition threshold, which is used to exempt smaller dollar procurements from a variety of procurement laws.

The following acquisition reform initiatives will be examined:

- Contract Bundling
- Reverse Auctions
- Multiple Award Schedules
- Electronic Commerce

1. Contract Bundling

Acquisition reform has focused on streamlining processes so that a smaller workforce with a reduced budget can provide superior contracting services to its customers. One streamlining initiative is to aggregate similar requirements that were previously acquired on multiple contracts into a single contract. This practice is known

as contract consolidation. When contract consolidation adversely affects small businesses ability to successfully compete for Government contracts, it is known as contract bundling.

The Small Business Reauthorization Act of 1997 (SBRA) gives extensive treatment to the topic of bundling. It defines bundling as: Consolidating two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into a solicitation for a single contract that is likely to be unsuitable for award to a small business concern due to the aggregate dollar value of the anticipated award; the diversity and size of the elements of performance specified; the geographical dispersion of the contract performance sites; or any combination of the above factors [Ref. 4].

The SBRA requires the SBA to review consolidated solicitations and to recommend alternate methods of procurement if it is found to meet the bundling definition. The Act requires Federal agencies to avoid unnecessary and unjustified bundling and structure procurements to facilitate small business participation. These statutory requirements were implemented via Federal Acquisition Circular 97-15 of December 27, 1999. In addition to providing the statutory definition for bundling, the most substantive additions to FAR addressed justifying bundling in the acquisition planning process, conducting market research before issuing bundled solicitations and including an evaluation factor addressing small business participation in bundled solicitations. The Act also gave the SBA more power to appeal an agency's bundling decisions to a Cabinet Secretary or Agency head.

In order to justify contract bundling, an agency must demonstrate specific cost savings, price reductions, quality improvements, reduction in acquisition cycle time, or better terms and conditions than in multiple smaller contracts and must result in significant savings. Significant savings are defined as ten percent of the contract value for contracts that are less than \$75 million, or five percent of the contract value if the contract is over \$75 million [Ref. 5].

According to Senator Christopher Bond, the ranking minority member of the Committee on Small Business and Entrepreneurship, the increase in bundling is a result of SBA's weak effort to monitor bundling practices. Senator Bond states that,

Contract bundling is one of the most direct and harmful challenges to small business today. The situation today is critical and caused by the SBA's lack of regulation and the need for the Federal Procurement Data System (FPDS) to collect and maintain the data [Ref. 6].

The 107th Congress (2001-2002) introduced the Small Business Contract Equity Act of 2001. Its main purpose is, "to require Federal agencies to follow certain procedures with respect to the bundling of procurement contract requirements..." [Ref. 7]. It outlines prohibitions on bundling of contracts for agencies that do not meet certain small business goals. Even though the new bill is the strongest to date, according to Senator Bond this is not enough. Senator Bond suggests the establishment of new, more stringent criteria for all Federal agencies to monitor the practice of prime contractors offering subcontracting opportunities to small businesses and to develop a standardized methodology to determine which purchases can be consolidated under anti-bundling laws and which ones should be offered to small business contractors [Ref. 8].

The SBA commissioned two studies regarding the impact contract bundling was having on small businesses. The first report was published in June of 1997. It concluded that bundling was growing in Federal procurements and was negatively affecting small businesses [Ref. 9]. This study likely led Congress to pass the SBRA and was the impetus for a GAO investigation. GAO found that insufficient data existed to determine the impact bundling had on small businesses. However, from its limited review, it concluded that contract consolidation did not necessarily result in bundling. It also indicated that the above study's conclusions were not supportable, since it used a different definition of bundling than SBRA.

The second SBA sponsored study was published in September 2000 and reached a similar conclusion as the first, indicating that in addition to the growth of contract bundling, small businesses are being negatively impacted by this trend [Ref. 10]. This study divided Federal contracting into four market segments: research and development, construction, manufacturing, and services. It identified contracts that contained multiple

Standard Industrial Classification (SIC) codes or multiple performance locations as bundled contracts. With this definition, this study found that 67% of contracts over \$1 billion and 62% of the dollars in those contracts were considered bundled. From FY 1989-1999 large businesses received 67% of all prime contracts and 74% of all bundled dollars, while the small business share of all prime contracts was 15%; 9% of bundled contract dollars and 23% of unbundled contract dollars. This study recommended decreasing the size and number of bundled contracts, strictly monitoring and enforcing Federal compliance with socio-economic goals, and increasing set-asides of bundled contracts for small business firms. The introduction of House bill, H.R. 1324, the Small Business Contract Equity Act of 2001, restricted Federal agency's discretion in issuing consolidated solicitations.

Consolidated solicitations have sparked a number of bid protests to GAO. Some have alleged agency violations of the Competition in Contracting Act (CICA), as consolidation results in a decrease in competition. GAO has been receptive to these arguments and clearly elevates the goal of competition over the benefits of bundling, except in a few limited circumstances. The circumstances GAO found to justify bundling under CICA were to preserve design integrity/interoperability, prevent overwhelming administrative burden and to promote national security/military readiness.

The Department of Defense recognized that the practice of contract bundling affects the ability of some small businesses to participate in procurement opportunities. As a result, DoD issued a policy memorandum entitled "Consolidation of Contract Requirements" which predates the Small Business Reauthorization Act of 1997 [Ref. 11]. DoD's policy memorandum signed by the Deputy Secretary of Defense is still in effect. The bundling rules establish clear guidelines for small businesses in forming joint ventures or teams for Government procurement actions. Under the current legislation, small businesses that establish a joint venture maintain their status as a small business for contracting purposes. Firms can combine strengths and expertise in various fields to increase small business opportunities and to participate as prime contractors on large Government contracts.

As a result of the SBRA, the Government now requires agencies to establish significant evaluation factors that promote subcontracting to small businesses to the maximum extent possible. A large business is required to demonstrate that it can, has, and will meet or exceed socio-economic goals for contracting with small and small disadvantaged firms. Since the socio-economic goals were increased from 20% to 23% in 1997, small businesses have a greater opportunity for subcontracting on large Government procurements.

The FAR states that “any contractor receiving a contract for more than the simplified acquisition threshold must agree in the contract that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns will have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance” [Ref. 12]. To encourage small business subcontracting opportunities, a Contracting Officer may allow for monetary incentives such as payments based on actual subcontracting achievement or award-fee contracting. The Government imposes these subcontracting requirements to insure procurement dollars flow to small businesses. Large firms receiving a prime contract of \$500,000 or more (\$1 million for construction contracts) must include subcontracting goals and a plan to the Contracting Officer for meeting those goals.

There are obvious benefits in consolidation such as efficiency and reduced contract costs. However, bundled contracts are often too large for small businesses to compete effectively. Even when a significant portion of the work is subcontracted out, the SBA has no system in place to monitor if these goals are being accomplished. As a result, the SBA has imposed new reporting requirements on industry. If a contract contains either of the SDB participation mechanisms, the evaluation factor for SDB participation or the Monetary Subcontracting Incentive, the Contracting Officer needs to determine at contract completion that the contractor met its SDB target in the authorized SIC Major Groups. The Government provides Optional Form 312 to provide the required information. This form is submitted at contract completion only. The second reason for the new reporting requirements is to provide a way for the Government to collect comprehensive subcontracting data by two-digit SIC code.

As stated in 15 U.S.C. 637(d)(8), any contractor or subcontractor failing to comply in good faith with the requirements of the subcontracting plan is in material breach of its contract. In addition, 15 U.S.C. 637(d)(4)(F) directs that a contractor's failure to make a good faith effort to comply with the requirements of the subcontracting plan shall result in the imposition of liquidated damages. Failure to award the dollar amount of subcontracts to SDBs as promised in its proposal could also affect a contractor's past performance record when it bids on future contracts, especially when seeking credit for SDB participation.

In October 2002, the Office of Federal Procurement Policy within OMB, unveiled its strategy for unbundling contracts with the release of a paper titled "A Strategy for Increasing Federal Contracting Opportunities for Small Businesses" [Ref. 13]. This paper came about as a result of President Bush's Small Business Agenda that proposed several steps to create an environment that enables small businesses to grow and prosper.

The paper concluded that Contract Bundling was hurting small businesses in terms of the number of Federal contracts being awarded to small businesses and the amount of procurement dollars flowing to contractors. OMB listed the following nine steps that will be taken to address Contract Bundling:

a. Ensure Accountability of Senior Agency Management for Improving Contracting Opportunities for Small Business

Senior agency management will be held accountable for eliminating unnecessary contract bundling and mitigating the effects of necessary and justified contract bundling. Agencies will be required to report to OMB's Deputy Director for Management on a periodic basis on the status of agency efforts to address contract bundling issues.

b. Ensure Timely and Accurate Reporting of Contract Bundling Information through the President's Management Council

The President's Management Council (PMC), composed of deputy secretaries and administrators from the 26 major executive branch departments and agencies, will ensure agency accountability for timely and accurate reporting on contract

bundling efforts and statistics. The PMC will be tasked with assisting OMB's Deputy Director for management with monitoring the status of agency efforts to address contract bundling.

c. Require Contract Bundling Reviews for Task and Delivery Orders Under Multiple Award Contract Vehicles

The definition of contract bundling in the FAR and SBA regulations will be clarified to require contract bundling reviews by the agency OSDBU for task and delivery orders under multiple award contract vehicles. Since contract bundling reviews are not specifically required by the FAR or SBA regulations for agency multiple award contracts (MACs), multi-agency contracts, Government-Wide Acquisition Contracts (GWACs), or GSA's Multiple Award Schedule Program, these contracts and the orders placed under these contracts effectively escape review.

d. Require Agency Review of Proposed Acquisitions Above Specified Thresholds for Unnecessary and Unjustified Contract Bundling

SBA regulations and the FAR will be modified to require contract bundling reviews of proposed acquisitions above agency-specific dollar thresholds. Individual agency review thresholds for acquisitions between \$2 million and \$7 million should be established based on an agency's volume of contracts and in consultation with the SBA.

e. Require Identification of Alternative Acquisition Strategies for the Proposed Bundling of Contracts Above Specified Thresholds and Written Justification When Alternatives Involving Less Bundling are Not Use.

SBA regulations and the FAR will be modified to require agencies to specifically identify alternative acquisition strategies that involve less bundling when an agency contemplates a bundled contract above a threshold between \$2 million and \$7 million.

f. Mitigate the Effects of Contract Bundling by Strengthening Compliance with Subcontracting Plans

In acquisitions where contract bundling is determined to be necessary and justified, actions will be taken to mitigate the effects of bundling by increasing subcontracting opportunities for small businesses. Federal contractors that receive contracts of \$500,000 for products or services or \$1 million for construction are generally

required to prepare plans for subcontracting with small businesses. To encourage greater small business participation as subcontractors in bundled acquisitions, the FAR will be amended to require agencies to use contractor compliance with sub-contracting plans as an evaluation factor for future contract awards. Agencies also will strengthen oversight of contractor efforts to comply with subcontracting plans by establishing procedures that designate personnel responsible for monitoring contractor compliance with subcontracting plans, delineate responsibilities of such personnel, and monitor their performance. These procedures will include specific requirements for agency monitoring of contractor efforts to comply with subcontracting plans for agency multiple award contracts (MACs), multi-agency contracts, Government-Wide Acquisition Contracts (GWACs), and GSA's Multiple Award Schedule Program contracts and orders under all of these types of contracts.

g. Mitigate the Effects of Contract Bundling by Facilitating the Development of Small Business Teams and Joint Ventures

In acquisitions where contract bundling is determined to be necessary and justified, actions will be taken to mitigate the effects of bundling by encouraging the development of teams of small businesses to effectively compete for bundled or consolidated contracts that might be too large or diversified for individual small businesses to perform.

h. Identify Best Practices for Maximizing Small Business Opportunities

Some agency acquisition plans and justifications for bundling contracts include successful strategies for maximizing prime and subcontracting opportunities for small businesses. In cooperation with department and agency procurement executives and OSDBU directors, SBA will collect and disseminate these examples and incorporate them in appropriate training courses and materials.

i. Dedicate Agency OSDBUs to the President's Small Business Agenda

In accordance with these recommendations, agency OSDBUs are expected to significantly increase reviews of proposed acquisitions for contract bundling as well as monitor contractor compliance with subcontracting plans. Heads of departments and

agencies will ensure that agency OSDBU resources are dedicated to the President's Small Business Agenda by issuing guidance, training personnel, and reallocating resources as necessary.

These proposed regulatory changes are to be prepared by January 31, 2003.

2. Reverse Auctions

Over the past ten years, Congress has expended considerable resources to reduce costs and promote a best value approach in Federal procurement. To accomplish this, the Federal Government has attempted to streamline the procurement process. One method that may help agencies achieve this goal is the use of reverse auctions.

Reverse Auctioning is an innovative pricing technique using secure Internet based technology. The level of competition is increased as suppliers compete in real time by bidding lower as they see other offers. Reverse auctions are a pricing tool that assists agencies in obtaining low prices and speeds up the procurement process. Savings have ranged from 2-25%, with a weighted average of 18%. Under a reverse auction, an agency posts its requirement for a quantity of products or services and then solicits bids from vendors looking to win that procurement contract. Vendors in the auction bid on the contract by undercutting the bid prices offered by other vendors. The vendor offering the lowest price for the contract wins. Reverse auctions are best suited to commercial-off-the-shelf (COTS) hardware purchases where price is the most important factor.

Reverse Auctions are not applicable to every acquisition. They require a clear and concise statement of requirements. Traditional documentation processes are still valid. Initial price proposals are required. Only sources determined to be in the competitive range can participate in the Reverse Auction. Offerors must give permission before their price may be disclosed. Offeror identities must also be protected.

The Information Technology Management Reform Act authorized the use of auctions to achieve the lowest price. In 1997, the Federal Acquisition Regulation adopted language to permit auctions. Federal agencies must still comply with all

procurement regulation and policies. It is an automated web-based way of soliciting quotes and determining to award to the lowest bidder or to the company providing the best value offer.

The solicitation must request initial proposals, provide notification of intent to use the reverse auction process, and provide notification that an offeror's price may be disclosed during discussions with their consent [Ref. 14]. In order to conduct negotiations, a competitive range must be determined. Price or cost must be evaluated in every acquisition. Therefore, in order to establish the competitive range and engage in discussions via the Reverse Auction, the Contracting Officer must first obtain proposals, including price proposals.

On-line auctions are small business friendly as they circumvent the “three-supplier” rule by allowing more participants in the bidding process, some who otherwise might not have had the opportunity to compete. Additionally, suppliers only need to have access to a web browser to participate. Reverse auctions demonstrate that the Federal Government is committed to creating equal opportunities for suppliers who can supply the items needed at the lowest price.

The Navy completed the first Reverse Auction in the Federal Government. The Naval Inventory Control Point (NAVICP) awarded a contract for recovery sequencers, the “brains” of aircraft Advanced Concept Ejection Seats. The Reverse Auction lasted 51 minutes, with three potential suppliers. NAVICP estimates it saved over 28% off the historical price for the recovery sequencers. NAVICP has conducted additional Reverse Auctions, for supplies as well as services, using both price and best value as evaluation criteria. NAVSUP reports that procurement lead-time was also saved. NAVSUP's criteria for viable procurements include requirements in excess of \$500K, as there are “return on investment” considerations [Ref. 15].

In May 2000, the CECOM Acquisition Center conducted the Army’s first reverse auction using software developed by Frictionless Inc. Frictionless was chosen as the provider based upon their unique concept of a catalog exchange. This unique feature searches the Internet for an item in exchange for the desired item for use if a customer

designates a brand name. This feature matches product specifications and finds suitable substitutes. In addition, this exchange feature permits the buyer to buy through the Internet in real time.

The CECOM Acquisition Center pays Frictionless Inc. a yearly license fee. Other agencies help finance the annual license fee in exchange for unlimited use of this web-based tool. CECOM's parent command, the Army Materiel Command, funds all infrastructure costs for what has become the Army's primary auction tool.

3. Multiple Award Schedules (MAS)

The Federal Acquisition Streamlining Act of 1994 and the Federal Acquisition Reform Act of 1996 touched upon virtually every aspect of the solicitation and award process, from synopsis to debriefing. These statutory provisions have, among other things, institutionalized the preference for commercial products and commercial practices in Government contracting.

For many decades the Federal Supply Schedules Program (FSS), awarded and administered by GSA, has provided a vehicle for the acquisition of commercial technology. Under this program, GSA enters into Government-wide contracts with commercial firms to provide commercial products and services, at stated prices, for given periods of time. Federal agencies place orders directly with the schedule contractor and deliveries are made directly to the customer. The FSS program closely mirrors commercial buying practices. The potential benefits of the FSS Program are shorter lead-times, lower administrative costs, and reduced inventories.

There are two parts of the program, Single Award Schedules and Multiple Award Schedules (MAS). Single Award Schedules are a relatively traditional method of contracting for commercial items. Contracts are made with one supplier for a specific product, at a stated price, for delivery to a geographical area. Under MAS, contracts are awarded to multiple companies supplying comparable services and products at varying prices. It allows agencies to easily and quickly purchase small quantities of commercial goods at fair and reasonable prices. Through the MAS program, users can choose the product that best meets their needs from a wide variety of goods.

Historically, the program has not used Government specifications or purchase descriptions. Instead, awards are made based on commercial product descriptions. In an October 27, 1988 memorandum, the Office of the Assistant Secretary of Defense stated, “DOD considers those Federal Supply Schedules which are optional for DOD to be 'preferred sources of supplies and services'”.

There is no statutory or regulatory need to synopsise requirements, seek further competition, determine price reasonableness, or comply with small business set-aside requirements when schedules are used. The use of GSA schedules allows DOD a quick and efficient way of obtaining needed requirements. This advantage led to the DOD policy that maximum use should be made of schedules [Ref. 16].

GSA's negotiation objective under the MAS program is based on “most favored customer” pricing. Contracting Officers determine prices fair and reasonable by comparing the price or discounts that a company offers the Government with the price or discounts that the company offers to its own commercial customers. In order to make this comparison, MAS solicitations request that companies provide information about their commercial pricing policies and practices.

On February 15, 1996, GSA revised the General Services Acquisition Regulation to implement parts of the Federal Acquisition Streamlining Act of 1994 dealing with the Truth in Negotiations Act as well as the acquisition of commercial items. The disclosure requirement is titled “Commercial Sales Practices Format”. As a result, there is now greater reliance on the disclosure of pricing policies, elimination of the pricing data certification and virtual elimination of the Government's right to conduct post award audit of pricing information. The implementation of this rule has greatly enhanced business opportunities using the Schedules Program [Ref. 17].

Effective October 25, 1994, the MAS ordering procedures were revised so that for orders under \$2500, agencies may order from any Schedule Contractor; for orders over \$2500, agencies may search for items using GSA's online shopping service GSA Advantage, or by checking three pricelists. Agencies select a contractor by making a best value determination. On August 22, 1997, FAR 8.4 was changed to provide additional guidelines for placing orders over the maximum order threshold. At this level, agencies

must consider additional pricelists. All MAS solicitations were published in the Commerce Business Daily (CBD). Effective January 1, 2002, the FedBizOpps (FBO) database has replaced the CBD.

Over the past several years, GSA has radically restructured the MAS Program ordering procedures. The changes were fueled by customer demand for choice, simplicity, commercial quality products and services and the latest technology. The MAS price reduction clause requires that the contractor reduce the Government's price when it reduces prices to the commercial customer that was the basis for award.

In October of 1994, a revised price reduction clause was introduced into all Federal Supply Schedule contracts. Previously, if a schedule contractor reduced its price to one Government agency, it was required to pass the reduction on to the entire Federal Government. The new clause now allows a schedule contractor to give one Federal customer a discount without passing the discount on to the entire Federal Government. This provision allows the contractor to offer and the Government to avail itself of spot pricing in the commercial market. MAS contracts previously contained Maximum Order Limitations (MOL). The MOL put a ceiling (usually a dollar amount) on the use of the Schedule Contract. Schedule Contracts no longer include MOLs. Instead, the contracts contain a Maximum Order (MO) threshold that acts as a trigger point for customers to seek additional price reductions for orders exceeding the threshold. When an agency places an order that exceeds the MO, the contractor may offer a new lower price for this requirement, offer the lowest price available under the contract or decline the order. The new MO procedures allow Multiple Award Schedule contractors to accept any size order. This change reduces the need for agencies to conduct duplicative and repetitive procurements for items already under contract.

Teaming Arrangements are permitted with Multiple Award Schedule Contractors, in accordance with FAR 9.6. A Teaming Arrangement may be incorporated into a Blanket Purchase Agreement. Blanket Purchase Agreements are used together with Federal Supply Schedule contracts as a means of satisfying recurring requirements, reducing acquisition costs through quantity discounts and reducing administrative costs. All contracts awarded under the MAS program are compliant with applicable FAR

regulations and in accordance with the Competition in Contracting Act (CICA). Contract periods are five (5) years plus three separate five (5) year option periods. As their commercial line evolves, contractors are able to add or delete products and services, thus ensuring customer access to the latest technology.

The Small Business Development Center (SBSDC) was started in April 1999 by GSA to assist Federal agencies in meeting their procurement preference goals and to assist 8(a) small and disadvantaged businesses to compete in the Federal market. SBSDC launched Smallbizmall.gov in April 2000. This is the first Government e-commerce site that focuses exclusively on 8(a) SDB businesses for Government-wide information technology purchasing. GSA and SBA signed an agreement that allows agencies to count 8(a) contracts awarded under the MAS program toward their 8(a) goals.

Starting in Fiscal Year 1999, SBA has allowed agencies to include the dollar value of estimated FSS orders in their procurement base and goals and to report FSS acquisitions as accomplishments against these goals.

The recent changes that have taken place in GSA have made it simpler and more efficient for Federal agencies to utilize GSA contracts. SBA staffs each GSA office with personnel whose function is to monitor that small business goals are being met. The popularity of large MAS schedules and huge technology contracts such as Millennia Lite, which can go as high as 20 billion dollars, has continued to grow which heightens the need for oversight.

4. Electronic Commerce

E-commerce refers to any form of electronic transaction that is done for the enhancement of a business or its profits. E-commerce takes a number of forms such as business-to-business, business-to consumer, e-procurement and e-marketplaces or auction sites. The growth of Internet technology among small businesses is expanding rapidly as owners become aware and knowledgeable of the potential for process efficiencies and cost savings. Global expansion of the Internet is creating new competitive challenges for the U.S. small business sector.

In October 1993, President Bill Clinton issued a Memorandum directing agencies to streamline procurement by adopting e-commerce [Ref. 18]. The central component of

this initiative is a technology called electronic data interchange (EDI). EDI is the computer-to-computer exchange of business data between organizations in a standard electronic format. The hardware, software and communications components necessary for EDI are part of the Federal Acquisition Computer Network (FACNET).

EDI opens up the acquisition process to any business with a personal computer. The use of this infrastructure supports the concept of a “single face to industry” that enables contractors to register with the Government just one time through the Central Contractor Registration (CCR) program and be able to do business with any Government agency without needing to register separately with each agency.

Government buyers are able to publicize their business opportunities via the Internet by posting information directly to FedBizOpps. FedBizOpps.gov is the single Government point-of-entry for Federal procurement opportunities over \$25,000. Commercial vendors seeking Federal markets for their products and services can search, monitor and retrieve opportunities solicited by the entire Federal contracting community through this one portal.

Another resource available to small businesses is “Pro-Net”. Pro Net is an electronic gateway of procurement information for small businesses developed by the SBA. It is an Internet-based database of information on more than 195,000 small, small disadvantaged, 8(a), HUBZone, Women-Owned businesses and Service-Disabled Veteran-Owned Small Businesses. It is designed to be a virtual one-stop-procurement-shop.

GSA customers can utilize an electronic online shopping and ordering system called “GSA Advantage”. It provides online access to several thousand contractors and millions of services and products. All Multiple Award Schedules are currently listed on GSA Advantage. Electronic ordering through GSA Advantage allows orders to go directly to the contractor thus creating a contractor customer relationship.

A GAO report titled “Electronic Commerce Implementation Strategy Can Be Improved”, found that DoD’s plan to use electronic commerce technologies to transform and streamline its business processes is at risk. GAO attributes this to the failure of DoD to complete an implementation plan and an electronic commerce architecture. The fact

that each of the Military Services and Defense agencies are developing their own plans and supporting initiatives, means that valuable resources are in all likelihood being wasted on redundant and unnecessary programs. Another problem with DoD's plan is that they do not yet have the secure environment to safeguard and authenticate electronic commerce transactions. DOD has recognized this and is moving forward on a Public Key Infrastructure Program to help improve security. However, numerous technical issues still need to be resolved. Until these issues are resolved, realistic program costs and implementation dates will remain uncertain. Moreover, because security is crucial to all of the Department's business processes, these uncertainties have the potential to affect its overall electronic commerce program [Ref. 19].

E. SUMMARY

Acquisition reform legislation has resulted in a myriad of changes for small businesses that compete for Federal contracts. Some of these changes have been beneficial for small businesses while others have resulted in new challenges. As large contracts have become more prevalent, small businesses have become more reliant on subcontracting as a means of obtaining business in the Federal marketplace.

III. ACQUISITION REFORM SURVEY ANALYSIS

A. INTRODUCTION

In this chapter, the researcher presents the questionnaire results as a means of highlighting the viewpoint of small businesses regarding how they are being affected by acquisition reform.

B. QUESTIONNAIRE BACKGROUND

The questionnaire, provided in its entirety in Appendix B, was presented to various small business Government contractors via phone interviews. The small businesses were randomly selected from a listing of small businesses listed on the CECOM SADB home page. A total of 10 small businesses were interviewed as part of this survey. The respondents were either the contracts manager or the President/VP of the company.

C. QUESTIONNAIRE QUESTIONS AND RESPONSES

- Respondents were asked to name the size of the company with options of 1-10, 11-25, 26-50, 51-100, 101-150, 151-200, 201-250 and above 250.

Question: Approximately how many employees does your company have?

Responses: Table 1 summarizes the respondents' answers.

Table 1. Respondents' Company Size by Number of Employees.

No. of Employees	1-50	51-100	101-150	151-200	201-250	>250
Number of Companies	2	2	2	0	1	3

Developed by Researcher

- Respondents were queried as to what percentage of the company's business is DoD related with options of 1-25, 26-50, 51-75 and 76-100.

Question: What percentage of your company's business is Department of Defense related?

Responses: Table 2 summarizes the respondents' answers.

Table 2. Respondents' Portion of Business that Is DoD Related.

No. of Employees	1-25	26-50	51-75	76-100
Percent DOD related	3	2	1	4

Developed by Researcher

- Respondents were queried as to the percentage of the company's business is as a prime contractor vs. subcontractor. The options ranged from 1-25, 26-50, 51-75 and 76-100.

Question: What percentage of your company's business is in the role of a prime contractor/subcontractor?

Responses: Tables 3 summarizes the respondents' answers.

Table 3. Respondents' DoD Business Divided by Prime and Subcontractor.

Respondents' DOD business divided by prime and subcontractor	1-25	26-50	51-75	76-100
Prime	0	2	0	5
Subcontractor	1	2	0	3

Developed by Researcher

- To determine the respondent's familiarity with the acquisition reform areas in question, the respondents were queried as to their familiarity with contract bundling, electronic commerce, reverse auctions and multiple award schedules.

Question: Which of the following acquisition methods are you familiar with?

Responses: Tables 4 summarizes the respondents' answers.

Table 4. Respondents' Familiarity with DoD Acquisition Methods.

Respondents' familiarity with DOD acquisition methods	Familiar	Not Familiar
Contract Bundling	7	3
Reverse Auction	4	6
Electronic Commerce	9	1
Multiple Award Schedule	9	1

Developed by Researcher

- In order to measure the effect that contract bundling has had on small businesses, respondents were asked to rate how contract bundling has impacted their business. Respondents were asked to choose a number from 1-7 with one having the least impact and 7 having the most impact. The respondents were also asked if the impact was positive or negative.

Question: To what extent has contract bundling impacted your company's DoD business?

Responses: Tables 5 summarizes the respondents' answers.

Table 5. Respondents' Indicated Level of Impact of Contract Bundling on Its Business with DoD by Number of Employees.

Respondents' indicated level of impact of contract bundling on its business with DOD by number of employees	Extremely Positive	Positive	Neutral or NA	Negative	Extremely Negative	Not familiar with
Number of Employees						
1-50						2
51-100					1	1
101-150					2	
151-200						
201-250					1	
>250				1	2	

Developed by Researcher

All the respondents who were familiar with contract bundling expressed strongly negative views regarding its affect on small businesses. One small business responded

Contract Bundling reduces small business opportunities by capturing work that could be more readily made available as either 8(a), small business set-asides. Using the ruse of having mandatory goals within the bundling and no measurable means (positive or negative incentives to primes to make the small business goals) leaves small business participation to the whim of large businesses.

Another contractor responded,

Contract Bundling has resulted in my company losing out on small business set-asides. In addition, subcontracting goals are not being monitored. The prime contractor uses the small businesses to get an award and then when the contract is awarded, goes for the best prices it can get to do the award.

- The respondents were asked to quantify the extent that Electronic Commerce has impacted the company's ability to compete for and obtain DoD contracts on a scale of 1-7 with one having the least impact and seven the most impact. The respondents were also asked if the impact was positive or negative.

Question: To what extent has Electronic Commerce impacted your company's ability to compete for and obtain DoD contracts?

Responses: Tables 6 summarizes the respondents' answers.

Table 6. Respondents' Indicated Level of Impact of Electronic Commerce on Its Business With DoD by Number of Employees.

Respondents' indicated level of impact of electronic commerce on its business with DOD by number of employees	Extremely Positive	Positive	Neutral or NA	Negative	Extremely Negative	Not familiar with
Number of Employees						
1-50		2				
51-100	1		1			
101-150	1	1				
151-200						
201-250		1	1			
>250	1		1			

Developed by Researcher

Almost all of the respondents stated that Electronic Commerce was a positive development for small businesses as the use of the Internet gave them greater exposure to business opportunities. In addition, Electronic Commerce speeds up the solicitation and award process, resulting in greater efficiencies and cost savings. While some very small businesses may find it difficult to expend the funds and training to utilize Electronic Commerce, in today's economy it is vital to do so in order to succeed.

- The respondents were asked to quantify the extent that Reverse Auctions have impacted the company's ability to compete for and obtain DoD contracts on a scale of 1-7 with one having the least impact and seven the most impact. The respondents were also asked if the impact was positive or negative.

Question: To what extent has Reverse Auctions impacted your company's ability to compete for and obtain DoD contracts?

Responses: Tables 7 summarizes the respondents' answers.

Table 7. Respondents' Indicated Level of Impact of Reverse Auctions on Its Business with DoD by Number of Employees.

Respondents' indicated level of impact of reverse auction on its business with DOD by number of employees	Extremely Positive	Positive	Neutral or NA	Negative	Extremely Negative	Not familiar with
Number of Employees						
1-50			1	1		
51-100			1			1
101-150			1			1
151-200						
201-250						1
>250			2			1

Developed by Researcher

It is evident from the questionnaire data that the majority of the contractors interviewed are not familiar with or have a neutral or unfavorable opinion of reverse auctions. This can be partially attributed to the fact that the majority of the respondents are strictly service providers and do not sell hardware or materials. Reverse auctions are generally conducted for hardware and not for services. Another factor contributing to the survey results is that DoD has not conducted many reverse auctions in the short time that they have been available. In addition, a small business that has bid on but lost a reverse auction may have a negative view of reverse auctions. Even the winner might not like the reverse auction process if it results in a very low contract price.

Another issue regarding reverse auctions is whether it is cost effective in light of the fact that it is only used for hardware, most of which are for small purchases. This is an important issue in light of the costly software and technical support personnel necessary to conduct a reverse auction.

Reverse auctions may not drastically change or streamline the procurement process. However, it is a highly effective pricing tool, though it may take time to train the workforce and participating vendors to use it.

- The respondents were asked to quantify the extent that multiple award schedules have impacted the company's DoD business on a scale of 1-7 with one having the least impact and seven the most impact. The respondents were also asked if the impact was positive or negative.

Question: To what extent has Multiple Award Schedules impacted your company's DoD business?

Responses: Tables 8 summarizes the respondents' answers.

Table 8. Respondents' Indicated Level of Impact of Multiple Award Schedules on Its Business with DoD by Number of Employees.

Respondents' indicated level of impact of multiple award schedules on its business with DOD by number of employees	Extremely Positive	Positive	Neutral or NA	Negative	Extremely Negative	Not familiar with
Number of Employees						
1-50	1	1				
51-100					1	1
101-150	1	1				
151-200						
201-250	1					
>250			2		1	

Developed by Researcher

Five of the nine respondents who were familiar with Multiple Award Schedules responded that they have a positive impact on their company as it enables them to get a foot in the door and the ability to compete. Two respondents took a neutral position stating that Multiple Award Schedules were both good and bad for their company. The other two respondents had a negative view of Multiple Award Schedules. According to one contractor

Multiple Award Schedules cost small business dollars to bid and once they are awarded additional B&P and marketing is required to maintain the contracts. When solicitations are provided, unless you know the customers, a perceived winner is already predetermined by the requiring activity. The bottom line is that it is really not a level playing field, where schedules are held by both large and small businesses, and large businesses have the B&P and marketing to support the program.

However, most of the small businesses surveyed felt that they benefited from being able to participate in Multiple Award Schedules.

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IV. CONCLUSIONS AND RECOMMENDATIONS

A. INTRODUCTION

This study has explored how Acquisition Reform has impacted small businesses. It has shown that small businesses have been affected by the rapid changes that have taken place in Federal procurement. Acquisition reform has resulted in new challenges for small businesses to compete and win Government contracts.

B. CONCLUSIONS

1. Acquisition Reform Has Resulted in More Methods of Circumventing Competition

It is now much easier to acquire goods and services without competition. Notice requirements have been reduced, particularly as the Government increasingly fulfills its needs without conducting formal procurements. The popularity of large sole-source awards, which result from bundled contracts and in many cases from Multiple Award Schedules, tend to preclude direct small business participation. This trend necessitates an increased emphasis on subcontracting to fulfill small business goals. This in turn requires stricter subcontracting reporting requirements on the part of prime contractors.

2. Contract Bundling Has Had a Negative Impact on Small Business Participation

It is evident from the questionnaire responses that small businesses feel strongly that contract bundling is harmful to their financial well being as it impedes their ability to win Government contracts. In addition, the GAO has concluded that contract bundling has had a direct affect on the number of contracts awarded to small business. President Bush has recently directed agencies to un-bundle contracts. The problem with this requirement is that there is no system in place that can adequately monitor and enforce these requirements. As lawmakers focus attention on contract bundling, the SBA must act to rein in this practice, requiring agencies to justify bundling with cost-benefits analyses. A loophole in SBA requirement allows agencies to waive the cost-benefit rule if the agency head determines that bundling would support the agency's mission. More vigorous application and enforcement of these rules would make the effects of bundling less detrimental to small businesses.

“Bundling” has had an adverse impact on small businesses in terms of the number of firms receiving Federal contracts. The SBA study found that, “Small business participation fell in the two market sectors driving the growth in bundled contract spending over the last eight years and rose in the two sectors where bundled contract dollars fell.” This inverse relationship is causing the industrial base to shrink by discouraging capable small business firms from doing business with the Government.

C. RECOMMENDATIONS

1. Adherence to Subcontracting Plans Should Be Made Part of Past Performance

There is currently little oversight over prime contractors adherence to their subcontracting plans. One method to increase oversight of prime contractors would be to require source selection committees to evaluate how each contractor has carried out their subcontracting plans. This information can then be included under the past performance criteria. By doing this prime contractors will be motivated to fulfill all subcontracting efforts outlined in their subcontracting plans.

2. Incentives Should Be Provided to Prime Contractors Who Achieve Their Subcontracting Goals

Prime contractors must be monitored and be held accountable to carry out their subcontracting plans. One method of ensuring compliance to subcontracting plans is to build incentives into the contract. This would ensure that prime contractors are fulfilling their subcontracting goals related to small businesses.

D. ANSWERS TO RESEARCH QUESTIONS

1. Primary Research Question

- To what extent have recent acquisition reform measures and streamlined acquisition methods affected participation of small businesses in Government contracting?

The addition of new small business programs often results in existing groups having to compete against new entrants, such as disabled veterans, for a piece of the pie. This results in a situation in which nobody really gains. With the continuing reduction in the number of large defense contractors through mergers and acquisitions, Congress faces the challenge of preventing several huge defense corporations from dominating Federal procurement, at the exclusion of smaller firms. To achieve this requires constant vigilance to ensure that agencies are meeting their mandated goals. A new DoD policy

that requires twice-yearly reporting on progress regarding small business programs to the Under Secretary for Acquisition, Technology and Logistics and the Deputy Secretary is a step in the right direction. Under this policy, each DoD agency is responsible for annual small business improvement plans and is rated on its performance.

2. Secondary Research Questions

a. What Is a Small Business?

A small business concern is a firm that is independently owned and operated and not dominant in its field of operation. Most agencies set aside a share of their procurement activity exclusively for small businesses.

b. What are the Key Laws and Regulations That Govern Small Business Participation in Federal Government Procurement?

The Armed Services Procurement Act of 1947 was the first piece of legislation enacted by Congress specifically mandating that a fair proportion of total Federal purchases and contracts be placed with small business concerns. The Small Business Act of 1953 created the Small Business Administration (SBA) as an independent agency within the Executive Branch. This Act mandated that Federal agencies publish procurements over the small business threshold in the Commerce Business Daily as a means of informing small businesses of subcontracting possibilities. The Act also directed the use of new small business subcontracting clauses. Public Law (PL) 95-507 mandated that preference be given to small business concerns owned and controlled by socially and economically disadvantaged individuals and required inclusion of a clause giving maximum practicable opportunity for them to participate in Federal contracts. The law directed the SBA to report to Congress those agencies not affording these firms maximum practicable subcontracting opportunities. It required all Federal agency heads to establish goals for small business participation and to consult with and report to the SBA about such goals and their realization. In addition, it established an Office of Small and Disadvantaged Business Utilization within each agency. The National Defense Authorization Act (PL 99-661) amended the Small Business Act to revise provisions regarding the small business set-aside program, especially as such program relates to procurement set-asides. It set specified DoD contract award goals for small business concerns, historically black colleges and universities and minority institutions.

The Business Opportunity Development Reform Act of 1988 (PL 100-656) requires the President annually to establish specified Government-wide goals for procurement contracts awarded to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. It prescribes minimum participation goals and also requires the SBA to report to the President annually on the attainment of goals for participation by small business concerns.

c. What are the Most Significant Acquisition Reform Efforts Recently Implemented that Might Affect a Small Businesses?

Contract Bundling is the most significant of the acquisition reform efforts examined. Although contract bundling is not an acquisition reform initiative, it came about as a result of an emphasis on greater efficiency and speed, which is one of the hallmarks of acquisition reform. Multiple Award Schedules have had a significant affect on small businesses. For some, being on a GSA schedule has given them a chance to compete where they otherwise may not have had the opportunity. However, for many small businesses it has resulted in the allocation of much time and resources without anything to show for it. For large businesses, this is considered part of doing business. For small businesses, these expenditures can be devastating.

d. To What Extent Have These Reform Efforts Affected Small Business Participation in Federal Government Contracting?

The bundling of smaller contracts into larger ones translates into less contract awards going to small businesses. This has resulted in small businesses having to compete for a larger share of the subcontracting pie, which leaves them at the mercy of large corporations.

e. What Action Might Be Taken to Enhance Small Business Participation in Federal Government Contracting?

Expanding the SADBUs within each command would ensure that sufficient resources exist to reach out to small businesses and inform on the opportunities that exist for small business in the Federal marketplace. This would also allow the SADBUs to monitor contracts to ensure that subcontracting goals are being met. Before final closeout of a contract is completed, the SADBUs should review the subcontracting plan submitted by the contractor and make sure that all goals have been met.

APPENDIX A. SMALL BUSINESS PROGRAM

A. OVERVIEW OF THE SMALL BUSINESS PROGRAM

There are a variety of aspects to the small business program as developed and evolved by the Federal Government. This section will discuss the key elements of that program.

1. Small Business Set-Aside Program

This program is for acquisitions in which only small business firms can participate. There should be a reasonable expectation that offers will be received from two or more small firms able to successfully perform the requirement at a fair market price. This set-aside method can require the entire buy to be set-aside for small business participation or may require part of the buy to be reserved for small business. Under a “partial” set-aside, the remainder of the requirement is open for competition [Ref. 20: p. 13].

2. Small Disadvantaged Business (SDB) Program

This is a small business concern that is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more such individuals. To qualify as an SDB, a firm must obtain certification from the SBA [Ref. 20:p. 13].

3. 8(a) Program

This program allows the Government to award prime contracts to firms owned by socially and economically disadvantaged owners whose firm is certified in the Small Business Administration’s 8(a) Program. Under this program, the Contracting Officer should have a reasonable expectation of receiving a proposal from a certified 8(a) firm who can perform the work at a fair market price. This procurement method is very flexible and allows recommendation of a specific contractor for sole-source procurements of up to \$3 million for services and \$5 million for manufacturing requirements. It also

allows for competitive 8(a) awards exceeding the \$3 million and \$5 million dollar sole-source threshold. Under the program, SBA enters into a contract with an agency as the prime contractor and then subcontracts to 8(a) contractors to actually perform the work.

The purpose of the 8(a) program is to enable small disadvantaged businesses to participate in the economy by setting aside certain Federal contracts for companies that meet the 8(a) participation criteria. To be certified by the SBA as an 8(a) firm, an applicant must show that their firm is owned by socially and economically disadvantaged individuals, meets SBA's small business standards and has a reasonable potential for success. Once certified, firms can compete for contracts that are set aside by Federal agencies for 8(a) firms. In addition, firms may receive business development assistance from the SBA in such areas as contract support, financial assistance and forming joint ventures.

The 8(a) Program is set up as a nine year program composed of two stages. The Developmental Stage is the first four years with emphasis on sole source contracts, strengthening financial and managerial skills, and improving access to markets. The Transitional Stage is the last five years with emphasis on competition, overcoming remaining elements of economic disadvantage, and preparing for graduating out of the program. Small Businesses may apply for the 8(a) program if they are owned, operated, and managed on a daily basis by individuals who are socially and economically disadvantaged. The 8(a) Program is administered by the Small Business Administration (SBA) who must certify and monitor all firms in the program [Ref. 20:p. 18].

4. HUBZONE Empowerment Contracting Program

This program is included in the Small Business Reauthorization Act of 1997. The Program seeks to encourage economic development in designated historically underutilized business zones (HUBZones) through establishment of preferences for award of contracts to small businesses located in a HUBZone in which at least 35% of its employees are HUBZone residents. By fostering the growth of Federal contractors in these areas and ensuring that these contractors become viable businesses, the SBA is able to assist in the empowerment of HUBZone firms without adversely affecting efforts to streamline and improve the Federal procurement process [Ref. 21].

The intent of the HUBZone Program is to provide Federal contracting assistance for qualified small business concerns located in HUBZones, in an effort to increase employment opportunities, investment, and economic development in those areas. It is based on the belief that actual jobs, not job training, is what is needed to promote long-term economic viability of these businesses. This goal encompasses both prime and subcontracting utilization.

To qualify as a HUBZone firm, a firm must be small business owned and controlled by one or more U.S. citizens. A firm must also be located in a HUBZone and at least 35% of its employees must reside in a HUBZone. HUBZone contract goals were set as 2% in 2001, 2-½ % in 2002 and 3% in 2003 and each year thereafter [Ref. 20:p. 17].

For acquisitions exceeding the simplified acquisition threshold, the requirement to set aside an acquisition for HUBZone small business concerns takes priority over the requirement to set aside the acquisition for small business concerns. Previously, agencies were instructed to place more emphasis on the 8(a) program over the HUBZone program. Recent SBA guidance instructs agencies to place equal emphasis on the 8(a) program and the HUBZone program when awarding contracts to Small Businesses. However, it is easier to award a contract using the 8(a) sole-source program. A Contracting Officer can award a sole-source contract to an 8(a) firm by providing a brief justification to SBA and can negotiate directly with the firm to achieve a fair market price.

This process can take as little as three months. To award a contract to a HUBZone firm on a sole source basis, a Contracting Officer needs to determine the firm is the only existing HUBZone firm that can perform the work. This can be accomplished by conducting market research or by having only one responsible firm respond to a HUBZone set-aside announcement. This process can take as long as a year.

5. Minority Business Enterprise Program

This program was created as a result of exclusion of individuals on the basis of their gender or race. This program is viewed as an effort to open the doors of education, employment and business development opportunities to qualified individuals who happen to be members of a group experiencing longstanding discrimination.

Executive Order 11625 signed in 1971 outlined essential Government actions for developing a national program to assist minority contractors in becoming self-sufficient and competitive. A significant amount of Department of Defense (DOD) and Department of Army (DA) involvement was directed at the awarding of noncompetitive contracts to the Small Business Administration (SBA) under the Section 8(a) Program and direct awards of competitive Government prime contracts to disadvantaged firms. Changes to the Small Business Act in 1978 (Public Law 95-507) effectively changed the program terminology from “Minority business” to “disadvantaged business,” and also directed emphasis at subcontracting opportunities for SDBs. Public Law 99-661 established a 5% goal for contract awards to SDBs throughout DOD [Ref. 20:p. 5].

6. Women-Owned Small Business (WOSB) Program

This program came into being as a result of Executive Order 12138 signed in May 1979 by President Jimmy Carter that prescribed a national initiative to assist WOSB entrepreneurs. Congress also passed the Federal Acquisition Streamlining Act (P.L. 103-355) of 1994 which established a 5% Government-wide goal for contract and subcontract awards to WOSB for each fiscal year and later the SB Reauthorization Act of 2000 (PL 106-554) which allows Federal agencies to “restrict competition” when soliciting for supplies or services in industries where WOSB are underrepresented. The WOSB set-aside is limited to: contract not exceeding the \$3M (services) and \$5M (manufacturing) thresholds; award can be made at a fair and reasonable price; and being certified by a Federal agency, state Government, or national certifying entity approved by the Small Business Administration or if a WOSB can provide adequate documentation to support such certification. WOSB is defined as a concern which is at least 51% owned by one or more women; or, in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women and whose management and daily business operations are controlled by one or more women [Ref. 20:p. 20].

7. Veteran Owned Small Business (VOSB) and Disabled Veteran Owned Small Business (SDVOSB) Program

This program was established as part of the Veterans Entrepreneurship and Small Business Development Act of 1999 (P.L. 106-50). The Act recognized that many veterans and/or reservists have been negatively impacted by the numerous military deployments in the past 10 years. The VOSB/SDVOSB Program provides technical,

financial, and procurement assistance by expanding existing and establishing new assistance programs for veterans and service-disabled veterans who own or operate small businesses. The program establishes the Associate Administrator of Veterans Business Development within the Small Business Administration and defines service disabled veteran and veteran. The program established a statutory service-disabled veteran small business goal of 3% of prime and subcontract awards. However, there is no set-aside preference for these categories. Large business contractors must address their VOSB and SDVOSB subcontracting efforts in their Small Business Subcontracting Plan [Ref. 20].

8. Small Business Competitiveness Demonstration Program

This program was established as part of the Small Business Competitiveness Demonstration Act of 1998, Public Law 100-656 (15 USC 644). It assesses the ability of small businesses to compete successfully in certain industry categories without competition being restricted by the use of small business set-asides. It also provides for certain acquisitions to be reserved for emerging small business (ESB) participation and expands small business participation through continued use of set-aside procedures [Ref. 20:p. 18].

9. Mentor-Protégé Program

This program was established under Section 831 of the National Defense Authorization Act of FY 91. The purpose of the program is to provide incentives for DoD contractors to assist small disadvantaged businesses in enhancing their capabilities to increase participation of such firms in Government and commercial contracts. Qualified organizations employing the severely disabled are also eligible to participate as protégé firms [Ref. 20:p. 15].

10. Small Business Technology Transfer (STTR) Program

This program was authorized in 1992 by Congress as a pilot program to fund cooperative research and development projects. It is designed to join two powerful forces for technological progress: (1) the entrepreneurial talent of the high-tech small business and (2) the innovative ideas, science and engineering expertise, and facility resources of the nation's universities and research institutes. Up to \$600,000 in early-stage research

and development funding is available to small companies working cooperatively with researchers at universities and other research institutions under this program [Ref. 20:p. 16].

11. Very Small Business Pilot Program

This program was established under Section 304 of the Small Business Administration Reauthorization and Amendments Act of 1994 (PL 103-403). The purpose of the Very Small Business Pilot Program is to improve access to Government contract opportunities for concerns that are substantially below certain size standards by reserving certain acquisitions for competition among such concerns. This program is applicable for purchases between \$2,500 and \$50,000 when the contracting office is located within a geographical area serviced by a designated SBA District Office [Ref. 20:p. 20].

12. Small Business Subcontracting Program

This program requires large firms receiving a prime contract of \$500,000 or more (\$1 million for construction contracts) to include subcontracting goals and a plan to the Procuring Contracting Officer for meeting those goals. Any contractor receiving a contract for more than the simplified acquisition threshold must agree in the contract that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns will have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance [Ref. 12].

B. FEDERALLY MANDATED SMALL BUSINESS GOALS

Starting in 1997, Congress has mandated that at least 23 percent of all prime contract dollars be awarded to small businesses. The Federal Procurement Data Center (FPDC) annually reports the extent to which the Government has met this goal, based on SBA guidance. In fiscal year 2000, prime contract awards made to small businesses totaled 22.3 percent, falling slightly short of the mandated goal. For several reasons, this figure is misleading and small business might in reality be receiving considerably less. First, as reported in an August 2001 study by the GAO, SBA has directed FPDC to exclude several categories of contracts when calculating the percentage of contracts awarded to small business. These categories include awards using non-appropriated

funds, awards by agencies such as the Federal Aviation Administration that are exempt from the FAR, and awards for which small businesses have limited ability to compete [Ref. 22].

These exclusions totaled about 10 percent of Federal procurement dollars, which would equal about \$22.6 billion in fiscal year 2000. A large part of this can be attributed to DoD contracts with foreign companies as well as contracts performed outside the United States. These exclusions serve to inflate the percentage of small-business awards at some agencies. The FPDC figures are also misleading as they fail to take into account purchases below the acquisition threshold as well as purchases made with a Government purchase card. In fiscal year 2000 about \$12 billion was spent in purchase card transactions.

SBA provides annual guidance to agencies on goal setting. However, the guidance provided is incomplete and confusing. In addition, SBA does not provide agencies with a rationale for each exclusion. This guidance is the only source of information for Congress, small businesses and agencies regarding contracts excluded from the small business goal setting figures. SBA's failure to document the reasons for exclusion results in confusion as to how small business achievements are calculated.

The CECOM Acquisition Center based at Fort Monmouth, New Jersey mission is to acquire quality, technologically superior, next generation equipment and services for the Army. Working together with the local SADBUs Office, the CECOM Acquisition Center has attempted to meet or exceed its DoD mandated SBA set-aside goals.

Figure 1 shows the statistical breakdown of Small Business set-asides for the CECOM Acquisition Center for FY 2002.

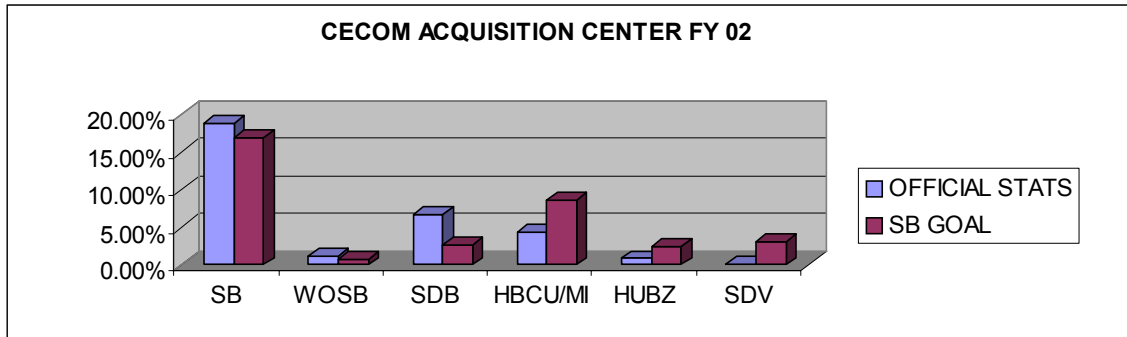


Figure 1. Statistical Breakdown of Small Business Set-Asides for the CECOM Acquisition Center for FY 2002. (From: CECOM SADBUs)

It is apparent from Figure 1 that the CECOM Acquisition Center failed to meet their goals for FY 02 in the HUBZone, HBCU/MI and SDV categories. A GAO report released in October 2001 may help explain this trend [Ref. 23]. The report included recommendations to improve the accuracy of reporting agencies achievements under the HUBZone Program. GAO also recommended that SBA develop guidance for all Federal agencies to assist them in identifying contracts to be reported to the Federal Procurement Data System that meets the HUBZone Program criteria. The report indicated that agencies were unsure of what qualifies as a HUBZone contract because SBA did not provide guidance about which contracts count towards HUBZone Program achievements. For example, certain agencies are counting dollars awarded under multiple-year contracts (including options) towards HUBZone goal achievements even though the contract award occurred before the small business became certified as a HUBZone contractor.

The report indicated that SBA officials believed that a contract awarded to a firm that is not certified to participate in the HUBZone Program should not count as a HUBZone achievement, regardless of whether the firm became certified during the term of the contract. SBA continues to support that position.

This guidance is provided to agencies as part of the FPDS Reporting Manual to assist them in identifying which contract actions to report to the FPDS that meet the HUBZone criteria.

In an interview with Joseph Brady, Director of the CECOM SADBUs, Mr. Brady praised the exemplary record of the CECOM SADBUs in meeting its DoD mandated

goals in most categories. He blames the shortfall in HUBZone awards on the rule requiring 35% of HUBZone employees to reside within the HUBZone. The result is that there are only two or three HUBZone firms in the local area. Mr. Brady believes that HUBZone figures will increase through the subcontracting program, which requires that 3% of a contract go to HUBZone firms. SDBs have had much greater success than other categories mostly due to the popularity of the 8(a) Program. There are multiple methods available to direct business to 8(a) concerns, which make it easier for agencies to award contracts to them. In addition, under the 8(a) program, if a contract is awarded to a tribally owned or Native Alaskan concern, the 3 and 5 million dollar threshold does not apply. Besides helping agencies achieve their 8(a) goals, this exemption should eventually help agencies achieve their HUBZone goals as well. This is because Tribally owned and Native Alaskan concerns are categorized as HUBZone concerns in addition to being 8(a) concerns.

To help agencies meet their HUBZone goals, GSA released a solicitation on December 31, 2001, for the first multiple award, GWAC contract dedicated to information technology contractors certified in HUBZones.

The solicitation proposes awarding five-year contracts for information technology and network products and services to companies located in HUBZones. The contract is expected to save procurement lead-time by identifying certified HUBZone firms qualified to participate in information technology initiatives [Ref. 24].

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APPENDIX B. SURVEY

Name of Contractor:

1. Approximately how many employees does your company have?

____ 1-10 ____ 11-25 ____ 26-50 ____ 51-100 ____ 101-150

____ 151-200 ____ 201-250 ____ above 250

2. What percent of your company's business is Department of Defense (DoD) related?

____ 1-25 ____ 26-50 ____ 51-75 ____ 76-100

3. What percent of your company's business is in the role of a prime contractor/subcontractor?

Prime: ____ 1-25 ____ 26-50 ____ 51-75 ____ 76-100

Subcontractor: ____ 1-25 ____ 26-50 ____ 51-75 ____ 76-100

4. Which of the following acquisition methods are you familiar with?

Contract Bundling ____

Electronic Commerce ____

Reverse Auction ____

Multiple Award Schedule ____

To what extent has contract bundling impacted your company's DoD business?

1 ____ 2 ____ 3 ____ 4 ____ 5 ____ 6 ____ 7 ____

(1 having the least effect and 7 the most)

Type of impact: Positive ____ Negative ____

If above 4 (either positive or negative) please explain:

5. To what extent has Electronic Commerce impacted your company's ability to compete for and obtain Government contracts?

1 ____ 2 ____ 3 ____ 4 ____ 5 ____ 6 ____ 7 ____

Type of impact: Positive ____ Negative ____

If above 4 (either positive or negative) please explain:

6. To what extent have Reverse Auctions impacted your company's ability to compete for and obtain DoD contracts?

1___ 2___ 3___ 4___ 5___ 6___ 7___

Type of impact: Positive___ Negative___

If above 4 (either positive or negative) please explain:

7. To what extent have Multiple Award Schedules impacted your company's DoD business?

1___ 2___ 3___ 4___ 5___ 6___ 7___

Type of impact: Positive___ Negative___

If above 4 (either positive or negative) please explain:

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